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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH DAMON MALOY,

Defendant and Appellant.

B208303

(Los Angeles County
Super. Ct. No. KA075293)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Juan C. Dominguez, Judge. Affirmed.

David Keith Maloy, in pro. per.; and David McNeil Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Keith Damon Maloy appeals from the judgment entered following an order revoking his probation and imposing a four-year state prison sentence as a result of his earlier guilty plea to possession of cocaine.

On June 5, 2006, Malloy was arrested and subsequently charged by felony complaint with possession of cocaine in violation of Health and Safety Code section 11350, subdivision (a). The complaint also alleged Maloy had suffered one prior conviction within the meaning of Health and Safety Code section 11370, subdivisions (a) and (c), and two prior serious or violent felony convictions within the meaning of Penal Code sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d).

Pursuant to a negotiated agreement, Maloy waived his constitutional rights and entered a plea of no contest to possession of cocaine and admitted the prior conviction allegations. The trial court suspended imposition of sentence and placed Maloy on three years of formal probation pursuant to Proposition 36 (Pen. Code, § 1210 et seq.). On two different occasions, Maloy failed to appear in court for a progress report. Each time his probation and participation in the Proposition 36 program was summarily revoked, and a bench warrant was issued for his arrest. However, when Maloy appeared in court, waived his right to a contested hearing and admitted having violated his probation, each time the court reinstated his probation and participation in the Proposition 36 program.

Maloy later left the Proposition 36 program without permission. The trial court summarily revoked his probation and issued a bench warrant for his arrest. When Maloy appeared in court, his probation was reinstated subject to modified conditions: Maloy was terminated from the Proposition 36 program and ordered to complete a residential treatment program at the Volunteers of America Center.

On March 13, 2008, the trial court summarily revoked Maloy's probation and issued a warrant for his arrest after he failed to appear in court for a progress report. After Maloy was arrested on the bench warrant, his attorney filed a document on April 28, 2008, entitled "Motion to Vacate Judgement [sic]; Habeus [sic] Corpus and/or Coram Nobis," which alleged police planted false evidence Maloy possessed cocaine on

June 5, 2006, and fabricated his arrest report to ensure Maloy would be sentenced to state prison. According to Maloy, the officers were retaliating against him for being acquitted in an earlier trial of an unrelated drug offense.

At the combined motion/petition and probation violation hearing on May 21, 2008, the trial court heard and summarily denied the motion/petition and found Maloy in violation of probation for failing to appear on March 13, 2008. The trial court granted the People's motion to strike one of the prior strike convictions, declined to reinstate probation, and sentenced Maloy as a second strike offender to four years (double the two-year middle term) in state prison.

Maloy received presentence custody credit of 453 days (331 actual days and 122 days of conduct credit). The trial court ordered Maloy to pay a \$200 restitution fine. A parole revocation fine was imposed and suspended pursuant to Penal Code section 1202.45.

We appointed counsel to represent Maloy on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On March 2, 2009, we advised Maloy he had 30 days within which to personally submit any contentions or issues he wished us to consider. On March 12, 2009, we received a handprinted supplemental brief in which Maloy again claims, as he did before the trial court, that he was falsely arrested by police in retaliation for his earlier acquittal in an unrelated case.

We have examined the entire record and are satisfied Maloy's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.) Because Maloy's claim in his supplemental brief is based on information outside the record, it cannot be properly considered by us on direct appeal. (*People v. Smith* (2007) 40 Cal.4th 483, 507; *People v. Barnett* (1998) 17 Cal.4th 1044, 1183.) However, in the interests of

judicial economy and fairness to Maloy, rather than reject his claim we deem it a petition for writ of habeas corpus and consider it separately on that basis.¹

The judgment and order are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

¹ *In re Maloy*, B216303